

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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**DECLARATION OF JOANNE M. CICALA IN SUPPORT OF THE CITY OF
NEW YORK AND NEW YORK COUNTIES' RESPONSE AND OBJECTION TO
THE PROPOSED SETTLEMENT BETWEEN CALIFORNIA, FLORIDA AND
RELATOR VEN-A-CARE OF THE FLORIDA KEYS ON BEHALF OF ITSELF AND
THE UNITED STATES AND SCHERING-PLOUGH, SCHERING & WARRICK**

I, the undersigned Joanne M. Cicala, submit this Declaration. I have personal knowledge of the following facts:

1. I am a partner at Kirby McInerney LLP and counsel for the City of New York and all New York Counties in MDL 1456, except Nassau and Orange.
2. Attached as Exhibit A hereto is a chart identifying the 31 current and former federal government employees who have been deposed in MDL 1456 (“the Federal Depositions”). All of these persons either worked for either Center for Medicaid/Medicare Services (“CMS”), Health Care Finance Administration (“HCFA”), the Office of Inspector General or acted as an agent thereof.
3. Based on a review of available deposition notices and cross-notices, Exhibit A identifies the case and party that noticed each Federal Deposition and whether the Federal

Deposition was cross-noticed or noticed by reference in MDL 1456 to include *The City of New York et al. v. Abbott Labs, Inc. et al.* action

4. Based on a review of the available Federal Deposition transcripts, Exhibit A identifies all defendants that appeared at the Federal Depositions.

5. Exhibit A supplements that which we have previously supplied to the Court concerning the subject of the number of federal witnesses deposed.

6. In our prior communications, we informed the Court that “there ha[d] been 27 CMS witnesses deposed by defendants over a total of 42 days. Attachment D sets forth this information.” See my July 10, 2008 letter to The Honorable Patti B. Saris (annexed hereto as Exhibit B). While that July 20, 2008 statement is correct, it does not provide a full picture of the number of federal witnesses deposed. In addition to the 27 CMS employees, there have been four OIG witnesses also deposed by defendants. These witnesses are: Cynthia Hansford, Amy Sernyak, David Tawes and Robert Vito. See Exhibit A hereto.

7. The correct number of CMS/HCFA/OIG witnesses deposed by defendants in MDL 1456 relating to Medicare and Medicaid issues is 31 and the total number of days is 50.

8. Attached hereto as Exhibit C is a true and correct copy of Case Management Order No. 9 entered November 17, 2003 governing coordination of discovery in *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL 1456 (“MDL AWP Litigation”).

9. Attached hereto as Exhibit D is a true and correct copy of the Protective Order entered December 13, 2002 in the AWP Litigation and applying to all actions in the AWP Litigation “and all future actions that are transferred to MDL No. 1456 for coordinated or consolidated pretrial proceedings [.]” Exhibit D at ¶1. The Protective Order entered December 13, 2002 governs “initial disclosures, the production and handling of documents, answers to interrogatories, responses to requests for admissions, depositions, pleadings, exhibits, other discovery taken pursuant to the Federal Rules of Civil Procedure, and all other information exchanged by the parties or by any third party in response to discovery requests or subpoenas.” Exhibit D at ¶2.

10. Attached as Exhibit E is a true and correct copy of the Notice of Deposition of Glenda Bailey in MDL 1456 dated March 8, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*

11. Attached as Exhibit E-1 are true and correct copies of excerpts from the 30(b)(6) Deposition of Glenda Bailey dated March 20, 2007.

12. Attached as Exhibit F is a true and correct copy of the Notice of Deposition of Amy Bassano in MDL 1456 dated October 17, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*

13. Attached as Exhibit F-1 are true and correct copies of excerpts from the Deposition of Amy Bassano dated November 7, 2007.

14. Attached as Exhibit G is a true and correct copy of the Cross-Notice of Deposition of Robert Berenson in MDL 1456 dated November 28, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* and “ALL CASES IN MDL 1456” in which Abbott Laboratories or Abbott Laboratories, Inc. (collectively “Abbott Labs”) is named, has appeared and in which discovery has not closed.

15. Attached as Exhibit G-1 are true and correct copies of excerpts from the Deposition of Dr. Robert Berenson dated December 18, 2007.

16. Attached as Exhibit H is a true and correct copy of the Cross-Notice of Deposition of Linda Ragone, Charles Booth, David Tawes, Thomas Scully, Bruce Vladeck, Lisa Foley-Stand, and Nancy-Ann Min DeParle in MDL 1456 dated April 9, 2007 and relating to “ALL ACTIONS” in which Schering, Schering Plough or Warrick have appeared, been named and been served.

17. Attached as Exhibit H-1 are true and correct copies of excerpts from the Deposition of Charles R. Booth dated April 23, 2007.

18. Attached as Exhibit H-2 are true and correct copies of excerpts from the Deposition of Nancy Ann DeParle dated May 18, 2007 and December 5, 2007.

19. Attached as Exhibit H-3 are true and correct copies of excerpts from the Deposition of Linda Ragone dated April 17-18, 2007.

20. Attached as Exhibit H-4 are true and correct copies of excerpts from the Deposition of Thomas Scully dated May 15, 2007 and July 13, 2007.

21. Attached as Exhibit H-5 are true and correct copies of excerpts from the Deposition of David Tawes dated April 24-25, 2007.

22. Attached as Exhibit H-6 are true and correct copies of excerpts from the Deposition of Bruce Vladeck dated May 4, 2007.

23. Attached as Exhibit I is a true and correct copy of the Notice of Deposition of Marianne Bowen in MDL 1456 dated May 18, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*

24. Attached as Exhibit I-1 are true and correct copies of excerpts from the Deposition of Marianne Bowen dated June 5, 2007.

25. Attached as Exhibit J is a true and correct copy of the Cross-Notice of Deposition of Kathleen Buto in MDL 1456 dated September 10, 2007 and relating to “ALL ACTIONS” in which Schering, Schering Plough or Warrick have appeared, been named and been served.

26. Attached as Exhibit J-1 are true and correct copies of excerpts from the Deposition of Kathleen Buto dated September 12-13, 2007.

27. Attached as Exhibit K are true and correct copies of excerpts from the Deposition of Tamara Bruce dated November 6, 2008.

28. Attached as Exhibit L is a true and correct copy of the Notice of Deposition of Joseph Bryant in MDL 1456 dated October 24, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*

29. Attached as Exhibit L-1 are true and correct copies of excerpts from the Deposition of Joseph Bryant dated November 15, 2007.

30. Attached as Exhibit M is a true and correct copy of the Cross-Notice of Deposition of Deirdre Duzor in MDL 1456 dated October 12, and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* and “ALL CASES IN MDL 1456” in which Abbott Labs is named, has appeared and in which discovery has not closed.

31. Attached as Exhibit M-1 are true and correct copies of excerpts from the Deposition of Deirdre Duzor dated November 15, 2007.

32. Attached as Exhibit N is a true and correct copy of the Cross-Notice of Deposition of Sue Gaston in MDL 1456 dated January 15, 2008, and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* and “ALL CASES IN MDL 1456” in which Abbott Labs is named, has appeared and in which discovery has not closed.

33. Attached as Exhibit N-1 are true and correct copies of excerpts from the Deposition of Sue Gaston dated January 24, 2008 and March 19, 2008.

34. Attached as Exhibit O is a true and correct copy of the Cross-Notice of Deposition of Thomas Gustafson in MDL 1456 dated September 10, 2007 and relating to “ALL ACTIONS” in which Schering, Schering Plough or Warrick have appeared, been named and been served.

35. Attached as Exhibit O-1 are true and correct copies of excerpts from the Deposition of Thomas Gustafson dated September 28, 2007 and December 17, 2007.

36. Attached as Exhibit P is a true and correct copy of the Cross-Notice of Depositions of Amy Sernyak and Cynthia Hansford in MDL 1456 dated February 28, 2007, and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* and “ALL CASES IN MDL 1456” in which Abbott Labs is named, has appeared and in which discovery has not closed.

37. Attached as Exhibit P-1 are true and correct copies of excerpts from the Deposition of Cynthia Hansford dated March 14, 2007.

38. Attached as Exhibit Q is a true and correct copy of the Cross-Notice of Deposition of Claire Hardwick in MDL 1456 dated May 31, 2007 and relating to "ALL CASES".

39. Attached as Exhibit Q-1 are true and correct copies of excerpts from the Deposition of Claire Hardwick dated June 6, 2007.

40. Attached as Exhibit R is a true and correct copy of the Cross-Notice of Deposition of John Hoover in MDL 1456 dated December 4, 2007, and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* and "ALL CASES IN MDL 1456" in which Abbott Labs is named, has appeared and in which discovery has not closed.

41. Attached as Exhibit R-1 are true and correct copies of excerpts from the Deposition of John Hoover dated December 18, 2007.

42. Attached as Exhibit S is a true and correct copy of the Cross-Notice of Deposition of Richard Morris in MDL 1456 dated August 13, 2007 and relating to "ALL ACTIONS" in which Schering, Schering Plough or Warrick have appeared, been named and been served.

43. Attached as Exhibit S-1 are true and correct copies of excerpts from the Deposition of Richard Morris dated August 29, 2007.

44. Attached as Exhibit T is a true and correct copy of the Cross-Notice of Deposition of Robert Niemann in MDL 1456 dated August 30, 2007 and relating to "ALL ACTIONS" in which Schering, Schering Plough or Warrick have appeared, been named and been served.

45. Attached as Exhibit T-1 are true and correct copies of excerpts from the Deposition of Robert Niemann dated September 14, 2007 and October 11, 2007.

46. Attached as Exhibit U is a true and correct copy of the Notice of Deposition of Lisa Parker in MDL 1456 dated March 8, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*

47. Attached as Exhibit U-1 are true and correct copies of excerpts from the Deposition of Lisa Parker dated June 6, 2007.

48. Attached as Exhibit V is a true and correct copy of the Cross-Notice of Deposition of Larry Reed in MDL 1456 dated September 14, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* and "ALL CASES IN MDL 1456" in which Abbott Labs is named, has appeared and in which discovery has not closed.

49. Attached as Exhibit V-1 are true and correct copies of excerpts from the Deposition of Larry Reed dated September 26, 2007, September 27, 2007, March 18, 2008 and March 20, 2008.

50. Attached as Exhibit W is a true and correct copy of the Cross-Notice of Deposition of Elizabeth Richter in MDL 1456 dated December 3, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corporation, et al.*

51. Attached as Exhibit W-1 are true and correct copies of excerpts from the Deposition of Elizabeth Richter dated December 7, 2007.

52. Attached as Exhibit X is a true and correct copy of the Notice of Deposition of Vickie Robey in MDL 1456 dated March 8, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*

53. Attached as Exhibit X-1 are true and correct copies of excerpts from the Deposition of Victoria Robey dated March 20, 2007.

54. Attached as Exhibit Y is a true and correct copy of the Cross-Notice of Deposition of Amy Sernyak in MDL 1456 dated February 27, 2007 and relating to "ALL ACTIONS" in which Schering, Schering Plough or Warrick have appeared, been named and been served.

55. Attached as Exhibit Y-1 are true and correct copies of excerpts from the Deposition of Amy Sernyak dated March 6, 2007.

56. Attached as Exhibit Z are true and correct copies of excerpts from the Deposition of Gayle Sexton dated May 20, 2008.

57. Attached as Exhibit AA is a true and correct copy of the Cross-Notice of Deposition of Dennis Smith in MDL 1456 dated February 14, 2008 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* and "ALL CASES IN MDL 1456" in which Abbott Labs is named, has appeared and in which discovery has not closed.

58. Attached as Exhibit AA-1 are true and correct copies of excerpts from the Deposition of Dennis Smith dated February 26, 2008 and March 27, 2008.

59. Attached as Exhibit BB is a true and correct copy of the Cross-Notice of Continued Deposition of Don Thompson in MDL 1456 dated April 14, 2008 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corporation, et al.*

60. Attached as Exhibit BB-1 are true and correct copies of excerpts from the Deposition of Don Thompson dated February 26, 2008.

61. Attached as Exhibit CC is a true and correct copy of the Amended Notice of Deposition of David Timus in MDL 1456 dated May 25, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.*

62. Attached as Exhibit CC-1 are true and correct copies of excerpts from the Deposition of David M. Timus Sr. dated June 6, 2007.

63. Attached as Exhibit DD is a true and correct copy of the Amended Cross-Notice of Deposition of Robert Vito in MDL 1456 dated May 23, 2007 and relating to *U.S. ex rel. Ven-A-Care of the Florida Keys, Inc. v. Abbott Laboratories, Inc.* and “ALL CASES IN MDL 1456” in which Abbott Labs is named, has appeared and in which discovery has not closed.

64. Attached as Exhibit DD-1 are true and correct copies of excerpts from the Deposition of Robert Vito dated June 19, 2007 and June 20, 2007.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: August 28, 2009

/s/ Joanne M. Cicala
Joanne M. Cicala

CERTIFICATE OF SERVICE

I, Jocelyn R. Normand., hereby certify that I caused a true and correct copy of the foregoing DECLARATION OF JOANNE M. CICALA to be served on counsel of record via electronic service pursuant to paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File and Serve for posting and notification to all parties.

Dated: August 28, 2009

/s/ Jocelyn R. Normand
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